



Report PE04.379
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Committee Rural Services and Wairarapa
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Grant of Lease - Section 98 Turanganui District - Turanganui River

1. Purpose

To grant a new lease under Section 61 of the Reserves Act 1977 and for the Council to retain access and resumption rights for the purpose of carrying out or maintaining flood mitigation and or river management works.

2. Public Excluded

Grounds for exclusion of the public under Section 48(1) of the Local Government Official Information Act 1987 are that public conduct of the whole or relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist – that is to carry on negotiations without prejudice or disadvantage (including commercial negotiations).

3. Background

Section 98 Turanganui District, situated in Block VII Onoke Survey District, containing 115.7401 hectares, was acquired by the South Wairarapa River Board for the purpose of deviating the Turanganui River in 1931.

The Turanganui River deviation work was undertaken (using unemployed labour with the Board meeting 1/3rd of the cost and NZ Government the balance 2/3rd) during 1932/33.

An application was received from the adjoining farmer/land owner, Mr A H Warren, to lease the land. The Board had no power to lease the land but was able, under section 367 of the Land Act 1924, to have the land declared Crown Land vested in the Board. This vesting was subject to the rights of the Board in carrying out the works for the Turanganui River deviation. Certificate volume

429 folio 109 was issued and comprises a renewable lease issued under Part III and Sections 146 and 367 of the Land Act 1924 and Section 15, subsection 4 of the Land Laws Amendment Act 1926.

For the Board, the Crown granted AH Warren a perpetually renewable lease, Crown File RL 471 being Deed dated 21 December 1933. Lease term 66 years from 1 January 1934 at a rent of 41 pounds and 4 shillings per annum payable 6 monthly on 1 January and July. This lease was due for renewal from 1 January 2000.

The Crown wishes to cancel the 1933 gazette, which placed the land under the Land Act 1924, and to have the land revert to a Reserve vested in the Council. Thus the Council will now grant a lease pursuant to Section 61 of the Reserves Act 1977, being identical terms as under the Land Act 1948. The lease will be perpetually renewable for 33 year terms with no rights of freehold. Importantly, the lease will embody rights for the Council to enter the land for river work purposes, at nominated trigger points and with adjustment to the rent payable.

3. The Proposal

Negotiations have been conducted with the current Lessee and owner of the adjoining land, the Rawahi Trust C/- Mr R.H. Warren. An agreement has been reached which the Rawahi Trust has approved and it is now necessary for Council approval to also be obtained.

Rawahi Trust has agreed to be granted a perpetually renewable lease for 33 year terms, with no rights of freehold, pursuant to Section 61 of the Reserves Act 1977. Importantly, the lease will embody rights for the Council to enter the land for river work purposes, at nominated trigger points and with adjustment to the rent payable.

The Council, for the purpose of carrying out or maintaining flood mitigation and or river management works on this reach of the Turanganui River must reserve the right to be able to deliberately deviate the river across the land under lease. The river is choked with metal and the gradient is insufficient for the metal to be naturally flushed. It is proposed to enter the leased land in a managed fashion, nature willing, where the land will progressively entered in 5 blocks. The river will be diverted within these blocks and over time will again become choked with gravel. It is estimated that this process will be spread over an 85 to 100 year period, which will see the metal content of the river catered for.

Several options were placed before Rawahi Trust ranging between full reversion of ownership to the Council now, with compensation, through to this grant of new lease scenario. It was the Rawahi Trust option to continue with the lease grant.

4. Primary Lease Terms Proposed

The lease was due for renewal on 1 January 2000, is to be granted under Section 61 of the Reserves Act 1977 and is to be perpetually renewable for terms of 33 years each.

The rent is to be set at 4.5% of the unimproved land value and the rent is to be reviewed 11 yearly throughout the term and at renewal.

The Lessee is to be responsible for the payment of rates and other outgoings associated with the land.

5. The Rent

Considerable effort has been expended on ensuring that the rent has been assessed appropriately. To set the rent, Council instructed Baker and Associates, rural valuers of Masterton. The 4.5% is fixed by the Land Act 1948 and is not in dispute. It is the unimproved land value that gave rise for concern.

First step was to undertake research to establish the condition of the land at the time the original lease was granted as the Land Act 1948 requires reference to the unimproved value of the land. Second step was to refer the valuation report to John Larmer, a rural valuer and recognised expert in assessing unimproved value of land, to provide a review of the methods adopted and to certify the appropriateness of the assessment. John's review did cause changes to be made.

Council and Rawahi Trust are now confident that the rent has been assessed appropriately.

6. Preservation of Council Access to the Land

The primary concern of Council has been to ensure that Council can access the land in the future for the purpose of carrying out or maintaining flood mitigation and or river management works. Much of the negotiation process has focussed on this issue. An agreement has been reached whereby Council could not needlessly exercise its right of entry but at the same time has not compromised Council's ability to effectively get on to the land and conduct the necessary work.

The proposal developed provides that it shall be agreed between Council and the Lessee that entry on to the land for the purpose of diversion of the Turanganui River shall be preceded by either Firstly one or more of the following scenarios, as to the level "*firstly*" recorded, being recorded over a period of not less than six months, with no significant form of reduction being recorded or Secondly one or more of the following scenarios, as to the level "*secondly*" recorded, being recorded in which event immediate entry can be effected:

The mean sea bed level at Turanganui River cross section Number 2 exceeding *firstly* 15.82 metres RL (reduced level at GW Datum) and *secondly* 15.92 metres RL; or

The mean sea bed level at Turanganui River cross section Number 3 exceeding *firstly* 18.96 metres RL and *secondly* 19.06 metres RL; or

The mean sea bed level at Turanganui River cross section Number 4 exceeding *firstly* 20.55 metres RL and *secondly* 20.65 metres RL; or

The mean sea bed level at Turanganui River cross section Number 5 exceeding *firstly* 22.50 metres RL and *secondly* 22.60 metres RL; or

In essence this proposal means that the Council will not enter the land until the flood capacity of the river reduces from the currently estimated 15 to 20 year return capacity down to the 5 year return capacity. Even at that time it must be able to show that that 5 year level has been in place consistently, without any significant form of reduction, for a minimum period of six months. As an exception, if the riverbed rises to the 2 year return period capacity, the Council will be permitted to enter immediately and undertake the work it deems to be necessary.

7. Special Conditions of Lease

- 7.1 GW to have the right at all times to enter upon the land for the purpose of carrying out or maintaining flood mitigation and /or river management works.
- 7.2 If the land or any part of it is required by GW for carrying out or maintaining flood mitigation and/or river management works then GW may, on giving the Lessee 6 months written notice take possession of the land, or any part of it.
- 7.3 It shall be agreed between GW and the Lessee that entry on to the land for the purpose of diversion of the Turanganui River shall be preceded by either Firstly one or more of the following scenarios, as to the level "*firstly*" recorded, being recorded over a period of not less than six months, with no significant form of reduction being recorded or Secondly one or more of the following scenarios, as to the level "*secondly*" recorded, being recorded in which event immediate entry can be effected:
 - The mean sea bed level at Turanganui River cross section Number 2 exceeding *firstly* 15.82 metres RL (reduced level at GW Datum) and *secondly* 15.92 metres RL; or
 - The mean sea bed level at Turanganui River cross section Number 3 exceeding *firstly* 18.96 metres RL and *secondly* 19.06 metres RL; or
 - The mean sea bed level at Turanganui River cross section Number 4 exceeding *firstly* 20.55 metres RL and *secondly* 20.65 metres RL; or
 - The mean sea bed level at Turanganui River cross section Number 5 exceeding *firstly* 22.50 metres RL and *secondly* 22.60 metres RL.

- 7.4 Entry to the land by GW for the purpose of the planned diversion of the Turanganui River shall be undertaken in a progressive fashion as shown on the attached “plan A” whereby area 1 shall be retired to the river first and area 5 shall be retired to the river last. This progression may not be possible in the event of an unplanned natural diversion, where in the opinion of GW it would not be practical or economic to put the river back in its original course. In such a case the area in “plan A” adjoining the natural diversion point shall be retired to the river first, with the other areas retired in ascending order up to area 5, and the remaining areas retired in either ascending or descending order.
- 7.5 On entry to the land by GW for the purpose of diversion of the Turanganui River GW shall relocate the fences to retain the balance land leased in a stock proof condition to the standard of the balance lease area, GW shall construct stopbanks to contain the river within the newly defined channel and GW shall construct open drains outside the stopbanks.
- 7.6 On entry to the land by GW for the purpose of diversion of the Turanganui River GW shall compensate the Lessee for the current market value of the lessee’s improvements to the land and on the land over the area entered upon by GW. For the purpose of this condition it is acknowledged that the Lessee’s improvements on the land comprise fencing, water supply and shelter and the Lessee’s improvements to the land comprise land development encompassing the original clearing, cultivation, grassing, drainage, consolidation and fertility. At January 2000, Lessee improvements to the land were assessed to amount to \$178,000 being \$2,918.00 per hectare over 61 hectares and improvements on the land amounted to \$20,000, a total overall of \$198,000.
- 7.7 On entry to the land by GW for the purpose of diversion of the Turanganui River the rent shall be adjusted to reflect the loss of the land to the Lessee. The rent adjustment shall be proportional to the area lost. For the purpose of this calculation it is acknowledged that while the lease is over 115.7401 hectares, the rent is based on 96 hectares at \$47.81 per hectare, the balance 19.7401 hectares is current river and lake bed at nil rental value.
- 7.8 On vacation of any part of the land by GW, the Lessee shall be granted the option to either have the land permanently alienated from the lease or to have it retained within the lease. If the option is to retain the land within the lease, the rent shall be calculated as at the date of the last relevant rent review date and shall be of the land in its unimproved condition together with any improvements GW may have provided. In any event GW and the Lessee shall record in writing the condition of the land at the time of resumption by the lessee and it is upon that description that all future rents shall be assessed.

8. Recommendation

That the Committee recommend to Council:

- (1) That Council resolve to grant a perpetually renewable lease over Section 98 Turanganui District, situated in Block VII Onoke Survey District, containing 115.7401 hectares, pursuant to Section 61 of the Reserves Act 1977, to Rawahi Trust on and subject to the terms and conditions set out in this report. The term to be 33 years from 01 January 2000 with the rent to be set at 4.5% of the unimproved land value, being \$4,590.00 plus GST per annum at commencement.*

- (2) That the Council Common Seal be affixed to the necessary documents.*

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